

CALIFORNIA COASTAL COMMISSION

NORTH COAST DISTRICT OFFICE

710 E STREET • SUITE 200

EUREKA, CA 95501-1865

VOICE (707) 445-7833

FACSIMILE (707) 445-7877

MAILING ADDRESS:

P. O. BOX 4908

EUREKA, CA 95502-4908



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| 49 th Day: | Waived |
| Staff: | Randall Stemler |
| Staff Report: | April 30, 2004 |
| Hearing Date: | May 13, 2004 |
| Commission Action: | |

STAFF REPORT: APPEAL

DETERMINATION OF APPEALABILITY,
SUBSTANTIAL ISSUE
AND
DE NOVO

| | |
|----------------------|--|
| APPEAL NO.: | A-1-MEN-03-003 |
| APPLICANTS: | Arthur B. & Linda J. Cody |
| AGENTS: | Jim Barrett Giny Chandler, Esq. |
| LOCAL GOVERNMENT: | County of Mendocino |
| DECISION: | Approval with Conditions |
| PROJECT LOCATION: | North side of Riverside Drive-Eureka Hill Road, immediately east of its intersection with Windy Hollow Road, Point Arena, Mendocino County (APN Nos. 027-221-01(x), 027-092-26(x), and 027-092-27. |
| PROJECT DESCRIPTION: | Coastal Development Minor Subdivision of an approximately 103-acre property creating two parcels: proposed Parcel 1 containing 43+- acres situated within the city limits of Point Arena and |

proposed Parcel 2 containing 60+- acres situated within the County of Mendocino.

APPELLANTS:

Commissioners Mike Reilly and John Woolley

SUBSTANTIVE FILE:
DOCUMENTS

- 1) Mendocino County CDMS 8-2002; and
 - 2) Mendocino County Local Coastal Program
 - 3) City of Point Arena Coastal Development Permit No. 2002-07
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SUMMARY OF STAFF RECOMMENDATION:

1. Summary of Staff Recommendation : Determination of Appealability

The staff recommends that the Commission determine that it has jurisdiction over this appeal under Coastal Act Section 30603(a)(4) and adopt the following findings. As described below, land divisions are development as defined under both the Coastal Act (Section 30106) and Mendocino County's Coastal Zoning Code (Section 20.544.020(B)(3).) and therefore require coastal development permit authorization pursuant to Section 30600 of the Coastal Act and Section 20.532.010 of the Mendocino County Coastal Zoning Code. Coastal Act Section 30603(a)(4) makes the approval of "any development" by a coastal county appealable to the Commission, with the only exception being development designated as the principal permitted use under the County's LCP zoning codes. Therefore, unless the County-approved development being appealed is specifically identified as one of the principal permitted uses, the Coastal Act provides the Commission with appellate jurisdiction review over the County-approved development.

In this case, the property affected by the approved subdivision is designated Rangeland under the LUP and is zoned Rangeland – Minimum 160 acres (RL-160) under the Coastal Zoning Code. A "land division" is not identified as one of the principally permitted uses under the County's Zoning Ordinance. Therefore, staff recommends that the Commission determine that the land division is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

Additionally, the County's certified LCP itself calls for the Commission's appellate review of land divisions. Mendocino County Coastal Zoning Code Section 20.544.020(B)(3) specifically states that any approved division of land is appealable to the Commission. Further, staff notes that the County's Notice of Final Action identified the approved land division as appealable to the Commission.

The motion to adopt the staff recommendation for Determination of Appealability is found on page 8.

2. Summary of Staff Recommendation: Substantial Issue

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission hold a *de novo* hearing, because the appellants have raised a substantial issue with the local government's action and its consistency with the certified Local Coastal Program (LCP).

The development, as approved by the County, consists of a division of an approximately 103-acre property located on the north side of Riverside Drive, also known as Eureka Hill Road in this location, immediately east of its intersection with Windy Hollow Road. The property is bisected by the city limit line of the City of Point Arena. The County-approved division splits the property into two parcels along the boundary line between the City of Point Arena and the County of Mendocino. Proposed Parcel 1 would be an approximately 43-acre portion of the property developed with a historic residence situated entirely within the City of Point Arena (Exhibit Nos. 3, 4, and 10), and is itself split-zoned with 2½-acres zoned Suburban Residential, and the remainder zoned Agricultural Exclusive. Proposed Parcel 2 would be an approximately 60-acre non-conforming portion of the property entirely situated within the County of Mendocino that is zoned Rangeland, Minimum 160 acres (Exhibit Nos. 3, 4 and 10).

The City of Point Arena approved Coastal Development Permit No. 2002-07 on June 26, 2002 for the portion of the land division located within the City's coastal development permit jurisdiction. The City's approval was not appealable to the Commission.

The appellants contend that their appeal raises a substantial issue of conformance of the development approved by the County with the County's LCP policies requiring a minimum parcel size of 160 acres for property zoned as Rangeland. The approximately 60-acre portion of the property that would be created in the County area zoned as Rangeland is clearly less than 160 acres. Therefore, the appeal raises a substantial issue of conformance of the project as approved by the County with the certified Coastal Zoning Code (CZC) requirement.

The appellants also contend that a substantial issue is raised with respect to conformance of the approved project with Land Use Plan (LUP) Policy 3.2-15 requiring land divisions of prime agriculture lands designated RL to require an approved master plan. No master plan was produced or submitted. Therefore, the appeal raises a substantial issue of conformance of the project as approved by the County with LUP Policy 3.2-15.

The appellants further contend that a substantial issue is raised with respect to conformance of the approved project with LUP Policy 3.2-16, which prohibits division of agricultural lands designated RL unless: (1) continued or renewed agricultural use is not feasible, (2) such conversion would preserve prime agricultural land, or (3) such division would concentrate development consistent with Section 30250 of the Coastal Act. The

County's approval of Coastal Development Minor Subdivision No. 8-2002 contains no findings demonstrating that any of the three exceptions to the prohibition on division of RL lands contained in LUP Policy 3.2-16 are present or why the approved division is otherwise consistent with LUP Policy 3.2-16. In fact, the County's adopted findings, contrary to exception No. 1, acknowledge continued agricultural use and agricultural viability. Aerial photographs indicate that the property is currently, and has been, under agricultural use. The agricultural-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicants' agent Mr. Jim Barrett, serves as grazing pasture for the applicants' horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. With regard to exception No. 2, contrary to preserving prime agricultural land, the land division would facilitate development of a home in prime agricultural-zoned lands, thereby reducing the size of the portion of the property that would be viable for continued agricultural use. In addition, the portions of the property currently within the City's jurisdiction, are designated Agricultural Exclusive, and would also be made less viable for agricultural use by being severed from the rest of the parcel. With regard to exception No. 3, the land division would not concentrate residential development within the city limits but would instead facilitate creation of another home in the Rangeland-zoned area outside of the urban area and within a rural area inconsistent with the concentration of development provisions of Section 30250 of the Coastal Act. Since none of the exceptions under LUP Policy 3.2-16 that would allow for division of this land designated RL under the County LCP have been demonstrated to exist, the County-approved land division raises a substantial issue of conformance with LUP Policy 3.2-16.

Finally, the appellants contend that a substantial issue is raised with respect to conformance of the approved project with LUP Policy 3.8-7 and CZC Section 20.516.015 requiring that a division of land creating new parcels only be approved where a satisfactory site for a sewage system exists. The County approval of the land division raises a substantial issue of conformance with LUP Policy 3.8-7 and CZC Section 20.516.015 because no evidence was provided at the time of County approval of the coastal development permit showing that a satisfactory site for a sewage system exists.

Staff recommends that the Commission find that the appeal raises a substantial issue of conformance of the project as approved by the County with the certified LCP policies, with respect to all of the contentions raised.

The motion to adopt the staff recommendation of Substantial Issue is found on page 9.

3. Summary of Staff Recommendation De Novo: Denial

The staff recommends that the Commission deny the coastal development permit for the proposed project on the basis that, the proposed project is inconsistent with the County's certified LCP.

The approved division of land is inconsistent with the rangeland protection provisions of the certified LCP and there are no conditions that could be imposed by the Commission in the *de novo* process that could make the proposed project consistent with the certified LCP. First, the proposed division of land into an approximately 43-acre parcel and an approximately 60-acre parcel does not conform to the minimum 160-acre lot size requirement for property zoned as Rangeland. Second, the proposed division is inconsistent with the requirement that an approved agricultural master plan be provided for review before subdivision of prime agricultural lands occur. No agricultural master plan was submitted by the applicants that would allow the Commission to make necessary findings that would support division of the land. Third, the proposed project is inconsistent with LUP Policy 3.2-16, which prohibits division of agricultural lands designated RL unless: (1) continued or renewed agricultural use is not feasible, (2) such conversion would preserve prime agricultural land, or (3) such division would concentrate development consistent with Section 30250 of the Coastal Act. With regard to exception No. 1, aerial photographs indicate that the property is currently, and has been under agricultural use. The agriculturally-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicants' agent Mr. Jim Barrett, serves as grazing pasture for the applicants' horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. With regard to exception No. 2, contrary to the goal of preserving prime agricultural land, the land division would facilitate development of a home in prime agricultural-zoned lands, thereby reducing the size of the portion of the property that would be viable for continued agricultural use. In addition, the portions of the property currently within the City's jurisdiction, are designated Agricultural Exclusive, and would also be made less viable for agricultural use by being severed from the rest of the property. With regard to exception No. 3, the proposed land division would not concentrate residential development within the city limits but would instead facilitate creation of another home in the Rangeland-zoned area outside of the urban area and within a rural area inconsistent with the concentration of development provisions of Section 30250 of the Coastal Act. Since none of the exceptions under LUP Policy 3.2-16 that would allow for division of this land designated RL under the County LCP have been demonstrated to exist, the proposed land division is inconsistent with LUP Policy 3.2-16. Therefore, staff recommends that the Commission deny the coastal development permit application.

The Motion to adopt the Staff Recommendation of Denial is found on page 10.

STAFF NOTES

1. Appeal Process

After certification of Local Coastal Programs (LCPs), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Section 30603 states that an action taken by a local government on a coastal development permit application may be appealed to the Commission for certain kinds of developments, including developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, within one hundred feet of a wetland or stream, within three hundred feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff, or within a sensitive coastal resource area.

Furthermore, developments approved by counties (but not cities) may be appealed if they are not designated the “principal permitted use” under the certified LCP. Finally, developments constituting major public works or major energy facilities may be appealed whether approved or denied by the city or county. The grounds for an appeal are limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access and public recreation policies set forth in the Coastal Act.

As discussed further below in the section entitled “Appealability Determination,” the subject development approved by the County is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act because the County-approved land division is “development” and divisions of land are not designated as the principal permitted use under the County’s zoning ordinance or zoning district map.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that the appeal raises no substantial issue of conformity of the approved project with the certified LCP. Since the staff is recommending substantial issue, unless three Commissioners object, it is presumed that the appeal raises a substantial issue and the Commission may proceed to its *de novo* review. If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. The only persons qualified to testify before the Commission on the substantial issue question are the applicants, the appellants and persons who made their views known to the local government (or their representatives). Testimony from other persons regarding substantial issue must be submitted in writing.

Unless it is determined that there is no substantial issue, the Commission will proceed to the *de novo* portion of the appeal hearing and review the merits of the proposed project. This *de novo* review may occur at the same or subsequent meeting. If the Commission were to conduct a *de novo* hearing on the appeal, the applicable test for the Commission to consider would be whether the development is in conformity with the certified Local Coastal Program.

2. Filing of Appeal.

The appellants filed an appeal (Exhibit No. 12) to the Commission in a timely manner on January 16, 2003, within 10 working days of receipt by the Commission on January 2, 2003 of the County's Notice of Final Action. On February 14, 2003, prior to the 49th day after the appeal was filed, the applicants signed a waiver of the requirements of Section 30621 that an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed.

3. City of Point Arena Action on Land Division

Because the subject property is bisected by the City and County boundary, the land division requires a Coastal Development Permit (CDP) from both jurisdictions to be legally recognized. On June 26, 2002, the City of Point Arena issued a Notice of Final Action stating that the City had granted Permit No. 2002-07, approving the proposed land division with conditions, and adopted a Negative Declaration for the project. Condition No. 4 of Permit No. 2002-07, imposed by the City, requires the applicants to submit to the City of Point Arena evidence that all appropriate permits and clearances have been obtained for the project from the County of Mendocino, particularly as they relate to the conditions of County approval attached to Permit No. CDMS 8-2002. The City's action on their CDP was not appealable to the Commission because Section 30603, which provides that development that is not designated the principal permitted use is appealable to the Commission, only applies to development approved by a county, not development approved by a city.

4. Previous Postponements and Revised Staff Report

An initial hearing on the appeal was planned for the Commission meeting conducted March 5, 2003. Prior to mailing the staff report, staff received from the applicants a signed waiver of the 49-day requirement for the Commission to set a hearing and take action on the appeal. The waiver requested additional time to explore a possible rehearing on the local Planning Commission action before the Board of Supervisors, and also to complete soils investigations for demonstrating the adequacy of a sewage disposal system. After receiving subsequent correspondence from the applicants transmitting the results of the sewage investigations and responding to the points raised in the appeal, the staff rescheduled the Commission hearing on the appeal for the Commission meeting of

November 6, 2003 in Los Angeles. In preparation of this scheduled hearing, a staff report was prepared and mailed on October 23, 2003. On October 30, 2003, Commission staff received a facsimile from the applicants, requesting a postponement to allow time to prepare a response to the staff recommendation. To date, staff has not received a response from the applicants to the staff's recommendation of substantial issue and denial.

On February 2, 2004, staff received a letter dated January 29, 2004, from Attorney Anne. E. Mudge representing the applicants, questioning the Commissioner's jurisdiction over the appeal (Exhibit No. 17). The appeal hearing was rescheduled for the April 2004 Commission meeting. On March 30, 2004, in a telephone conversation with staff, applicant Arthur Cody verbally requested an additional postponement of the Commission's hearing on the appeal until May 12-14, 2004 to allow time for selection of another attorney to represent him before the Commission. Staff granted this third request for postponement of the hearing until the meeting scheduled for May 14, 2004 in San Rafael.

Staff has revised the staff report since the publication of the original report on October 23, 2003 to include specific findings addressing the Commission's jurisdiction over the development approved by the County and provide a staff recommendation, motion, and resolution for a Commission vote on whether the Commission has jurisdiction over the appeal. The new motion and resolution are found on page 8 and 9 of the report, and the findings on the determination of appealability are found on pages 10 through 17 of the report. Staff also revised the staff report to include more information about the evolution of the current configuration of the property approved through County issuance of Certificates of Compliance and a permit granted for a boundary line adjustment. This new information is found on pages 19 and 20 within the "Project and Site Description" finding.

PART ONE—STAFF RECOMMENDATIONS, MOTIONS AND RESOLUTIONS

A. APPEALABILITY DETERMINATION

Staff recommends that the Commission determine that it has jurisdiction over this appeal.

MOTION:

I move that the Commission find that it has jurisdiction of this appeal under Public Resources Code Section 30603 and that it adopt the findings to support its jurisdiction that are set forth in the staff report.

Staff Recommendation that CDMS 8-2002 is Appealable:

Staff recommends a YES vote on the motion. The effect of a yes vote on the motion will be to adopt the following resolution and to proceed on the appeal. A majority of the Commission present is required to approve the motion.

Resolution:

The Commission hereby finds that it has jurisdiction of this appeal under Public Resources Code Section 30603(a)(4) and adopts the findings to support its jurisdiction that are set forth in the staff report.

B. SUBSTANTIAL ISSUE ACTION ON APPEAL

Pursuant to Section 30603(b) of the Coastal Act and as discussed below, the staff recommends that the Commission determine that a substantial issue exists with respect to the grounds on which the appeal has been filed. The proper motion is:

MOTION:

I move that the Commission determine that Appeal No. A-1-MEN-03-003 raises No Substantial Issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff Recommendation:

Staff recommends a **NO** vote. Failure of this motion will result in a *de novo* hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution To Find Substantial Issue:

The Commission hereby finds that Appeal No. A-1-MEN-03-003 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act regarding consistency of the approved project with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

C. DE NOVO ACTION ON APPEAL

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified local coastal program and **deny** the permit. The proper motion is:

MOTION: I move that the Commission approve Coastal Development Permit No. A-1-MEN-03-003 for the development proposed by the applicants.

Staff Recommendation of Denial:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit:

The Commission hereby **denies** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

PART TWO—DETERMINATION OF APPEALABILITY

I. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. CHALLENGE TO COMMISSION JURISDICTION

On February 2, 2004, Commission staff received a letter from the applicants' attorney Anne E. Mudge dated January 29, 2004 (Exhibit No. 17). The letter asks the Commission to dismiss the appeal, and bases the request on the allegation that the Commission lacks jurisdiction to hear the appeal.

The applicants' letter states:

The subdivision has been appealed to the Commission based on the claim that the County's subdivision of the property into two parcels constitutes a change in the "principal permitted use." It is our view that the Commission does not have the authority to appeal the County's approval of subdividing the land on this ground. We ask the Commission to dismiss the appeal.

The applicants cite Section 30603 of the Coastal Act, and then in justifying the contention that the Commission lacks appellate jurisdiction assert that:

- a. The division of property is not a change of a "principal permitted use."*
- b. Division of property into a parcel less than the minimum lot size required by the Mendocino County Coastal Zoning Code (160 acres) is also not a change in a "principal permitted use." and*
- c. Construction of a single-family residence on land zoned for agriculture is not a change of a "principal permitted use."*

B. SUMMARY OF COMMISSION RESPONSE TO CHALLENGE TO COMMISSION JURISDICTION

The Commission rejects the applicants' contention that the County's approval of the land division is not appealable to the Commission. Section 30603(a)(4) of the Coastal Act confers appellate jurisdiction over "any development" approved by a coastal county that is not designated as the principal permitted use under a county's approved zoning ordinance. A division of land constitutes "development" under both Section 30106 of the Coastal Act and the certified LCP. The property affected by the approved subdivision is designated Range Lands under the LUP and zoned Rangeland-Minimum 160 acres (RL-160) under the Coastal Zoning Code. Divisions of land are not designated as the principal permitted use under the applicable Mendocino County Zoning District (RL-160) or the applicable zoning district map (Exhibit No. 9). Because the division of land constitutes "development" but is not identified as the principal permitted use of the RL-160 Zoning District, any approval of a coastal development permit for a division of land in an RL-160 zone is appealable to the Coastal Commission. Therefore, as discussed more fully below, the Commission finds that the County's approval of the land division is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

C. LAND DIVISIONS ARE “DEVELOPMENT” UNDER THE COASTAL ACT AND MENDOCINO COUNTY COASTAL ZONING CODE

The definition of “development” explicitly includes divisions of land. Coastal Act Section 30106 and Mendocino County Coastal Zoning Code Section 20.308.035 (D) in applicable part both define “development” as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; [Emphasis added.]

Accordingly, pursuant to Section 30106 of the Coastal Act, and Mendocino County Coastal Zoning Code Section 20.308.035 (D) as cited above, the County-approved land division is development, and therefore requires a permit pursuant to Section 30600 of the Coastal Act, and Section 20.532.010 of the Mendocino County Coastal Zoning Code.

In this case, because Mendocino County has a certified LCP, the applicants obtained a coastal development permit for the land division from Mendocino County.

D. APPEALABILITY OF DEVELOPMENT APPROVED BY COASTAL COUNTY

Coastal Act and LCP Provisions

Under certain circumstances, coastal development permits approved by a coastal county are appealable to the Commission. Section 30603 of the Coastal Act provides the basis for appeal of locally issued coastal development permits to the Commission. That section provides, in part, that:

Section 30603

- a. After certification of its local coastal program, an action taken by a local government on a coastal development permit application may be appealed to the commission for only the following types of developments:*

- (1) Developments approved by the local government between the sea and the first public road...*
- (2) Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream...*
- (3) Developments approved by the local government not included within paragraph (1) or (2) that are located in a sensitive coastal resource area.*
- (4) Any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance or zoning district map approved pursuant to Chapter 6 (commencing with Section 30500) [Emphasis added].*
- (5) Any development which constitutes a major public works project or major energy facility.*

Section 30603(a)(4) makes the approval of “any development” by a coastal county appealable to the Commission, with the only exception being development that is “designated as the principal permitted use” under the zoning in the LCP. Therefore, unless the development being appealed is specifically identified as one of the principal permitted uses in the county’s zoning, the Coastal Act gives the Commission appellate jurisdiction to review it.

Mendocino County CZC Section 20.308.095(K) provides a definition of “Principal Permitted Use” as follows:

“Principal Permitted Use” means the primary use as designated in the Coastal Element and this Division for each land use classification. Use Types allowed within each principal permitted use category are specified in Chapter 20,356 through Chapter 20.404.

Mendocino County LUP Chapter 2.2 describes Land Use Plan Map Designations and lists the principal permitted uses for the Range Lands land use classification as follows:

Principal Permitted Use: Grazing and forage for livestock, including: raising of crops, wildlife habitat improvement; one single family dwelling per legally created parcel, harvesting of firewood for the residents [sic] personal use, home occupations.

Mendocino County Coastal Zoning Code Section 20.368.010 lists the principal permitted uses for Rangeland Districts as follows:

The following use types are permitted in the Range Lands District [RL-160]:

(A) Coastal Residential Use Types.

Family Residential: Single-Family; Vacation Home Rental.

(B) Coastal Agricultural Use Types.

General Agriculture; Light Agriculture; Row and Field Crops; Tree Crops.

(C) Coastal Open Space Use Types.

Passive Recreation.

(D) Coastal Natural Resource Use Types.

Fish and Wildlife Habitat Management.

The property affected by the approved division of land is designated Range Lands under the LUP and zoned Rangeland-Minimum 160 acres (RL-160) under the Coastal Zoning Code. The County's LUP and zoning ordinance fail to designate one principally permitted use for the RL-160 Zoning District. In addition, divisions of land are not designated as the principal permitted use under the applicable Mendocino County Zoning District (RL-160) or the applicable zoning district map (Exhibit No. 9). Because the division of land constitutes development but is not identified as the principal permitted use of the RL-160 Zoning District, any approval of a coastal development permit for a division of land in an RL-160 zone is appealable to the Coastal Commission. Therefore, the Commission finds that the County's approval of the land division is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act.

E. RESPONSE TO APPLICANTS' CONTENTION THAT APPROVED DEVELOPMENT NOT APPEALABLE

The applicants argue that subdivisions are not listed as the principal permitted use because land divisions are not properly considered uses of property in the zoning context. The applicants state:

Under Mendocino County's Code, the definition and examples of "principal permitted uses" have to do with the manner in which land is used. A division of land is not listed or even suggested as among the type of uses recognized under the County's Zoning Ordinance. "Land division," as referenced by the Commission Staff Report, does not appear in any category. Indeed, dividing property is not a physical use of property, it is a legal construct for ownership purposes. There is no category of land in Mendocino County for which the division thereof is the "principal permitted use."

However, the applicants' position ignores that Section 30603(a)(4) of the Coastal Act specifies that "*any development approved by a coastal county that is not designated as the principal permitted use under the zoning ordinance*" is appealable to the Commission. By maintaining that a subdivision is not a "use," the applicants reword Section 30603(a)(4), which concerns whether a proposed activity involves "development," such as divisions of land; in effect, the applicants' argument reads the word "development" out of this section of the Coastal Act. Whether or not the approved land division constitutes a change in a principal permitted use, the approved land division constitutes "development." An activity need not be a "use" to give rise to appellate review, so long as the activity constitutes "development." Development that is designated as the principal permitted use constitutes an *exception* to the Commission's appellate review. Thus, to the extent the applicants argue that a subdivision is not a "use," the applicants could at most establish that a subdivision cannot be a principal permitted use, and therefore cannot qualify as an *exception* to the Commission's appellate review authority.

The applicants also argue that the Commission has no appellate jurisdiction because construction of a single-family residence is a principal permitted use. However, the applicants are applying for a land division, not a single-family residence, and a land division is not a principal permitted use in the LCP.

Therefore, the Commission rejects the applicants' contention that the County's approval of the land division is not appealable to the Commission.

F. CERTIFIED LCP SUPPORTS COMMISSION'S ADMINISTRATIVE CONSTRUCTION OF ITS APPELLATE JURISDICTION

Moreover, as applied to the facts of this case, the Commission's interpretation of subsection (a)(4) fulfills the policies of the LCP. Had the applicants applied to construct a single family residence on the existing approximately 60-acre portion of the property, its approval would have been appealable as a conditional use, because the LCP allows only one house per legally created lot, and there is already a house on the other portion of this property. To allow the applicants to split the entire approximately 103-acre property without Commission review, and then allow him to build the same single family residence as a principal permitted use on a newly-created approximately 60-acre "legal lot," would lead to incongruous results.

The Commission also notes that the County's LCP itself calls for the Commission's appellate review of land divisions and confirms the Commission's administrative construction of its appellate jurisdiction. Mendocino County Coastal Zoning Code Section 20.544.020(B)(3) specifically states that any approved division of land is appealable to the Commission. Mendocino County CZC Section 20.544.020(B)(3) states in applicable part:

(B) An action taken on a coastal development permit may be appealed to the Coastal Commission for only the following types of developments:

...
(3) **Any approved division of land** [Emphasis added];

Consistent with the provisions of the certified LCP and Section 30603(a)(4) of the Coastal Act, Mendocino County identified the approved land division as appealable to the Commission in their Notice of Final Action dated December 31, 2002 and received by the Commission on January 2, 2003 (Exhibit No. 11).

G. REVIEW OF DIVISIONS OF LAND IN COASTAL ZONE IS AN ISSUE OF STATEWIDE SIGNIFICANCE

The Commission also finds that appellate review of land divisions for conformity with the policies of the County's LCP and the Coastal Act is a matter of statewide significance and that the Commission's administrative interpretation is consistent with both the language and purpose of Section 30603(a)(4) of the Coastal Act. Land divisions, particularly subdivision approvals, require complex planning involving important considerations about the level of residential development and the availability of public services. It is reasonable that the Legislature would have wanted the Commission to review a county's approval of a class of projects that may have potentially severe impacts. Likewise, divisions of land present issues that, unlike principal permitted uses, could not have been fully anticipated when the Commission certified the LCP, also supporting the need for Commission review. If the purpose of Coastal Act section 30603(a)(4) was to give the Commission appellate jurisdiction over uses that are conditional (that is, uses that are not principally permitted), then it is reasonable that the Commission would have jurisdiction to review the approval of a subdivision or lot split because their approval is a discretionary decision akin to the approval of a conditional use. Moreover, subdivisions and lot splits cause a change in the intensity or density of use, making their approval conceptually distinct from the approval of a principally permitted use that implements an expected use but does not change it. Finally, the Legislature's ongoing concern with the creation of new subdivisions (see Gov. Code, §§ 66410, et seq. [Subdivision Map Act]) and its specific concern about the impacts of significant new development in coastal counties (which, unlike cities, are more likely to be rural or only partially developed) also demonstrate that the Legislature intended that the Commission would exercise appellate jurisdiction over County decisions involving land divisions.

On appeal, the Commission previously denied another coastal development permit (Appeal No. A-1-MEN-02-148, Auguste) for a land division in Mendocino County in December of 2002 because the project would adversely affect use of the property for agricultural purposes. The proposed subdivision of land into a 5.88-acre parcel and a 6.48-acre parcel did not conform to the minimum 160-acre lot size requirement for property zoned as Rangeland. Also, the proposed subdivision of land into a 5.88 acre

parcel and a 6.48 acre parcel did not conform to the low-density zoning requirement for a 10-acre minimum lot size adjacent to lands under Agriculture Preserve (Williamson Act) contract. Without appellate authority in either the Auguste matter or the present case, a land division would have resulted in creation of an additional buildable parcel allowing a future homesite, increasing the intensity and density of use of the property and further reducing the viability of agricultural use of the property.

Therefore, the Commission finds that appellate review of land divisions approved by a County for conformity with policies of the County's LCP and the Coastal Act is a matter of statewide significance and that the Commission's administrative interpretation is consistent with both the language and purpose of Section 30603(a)(4).

H. CONCLUSION

The Commission finds that Section 30603(a)(4) confers the Commission with appellate jurisdiction over any development that is not listed as the principal permitted use in the County's certified LCP. Therefore, the Commission finds that because the land division constitutes "development" under 30106 of the Coastal Act, and because subdivisions are not designated as the principal permitted use under either the LUP Range Lands land use classification or the zoning district for the subject property under Mendocino County Coastal Zoning Code Section 20.368.010, the land division is appealable to the Commission pursuant to Section 30603(a)(4) of the Coastal Act. The Commission further finds that Mendocino County Zoning Code Section 20.544.020(B)(3) expressly confirms that land divisions are "development" that the County chose not to identify as the principal permitted use and that therefore any County action approving a local coastal development permit involving a division of land may be appealed to the Coastal Commission.

PART THREE—STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

I. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. APPELLANTS' CONTENTIONS

The Commission received an appeal of the County of Mendocino's decision to approve a division of land from Commission Chairman Mike Reilly and Commissioner John Woolley. The project, as approved by the County, consists of a division of land into two parcels of approximately 43 and approximately 60 acres. The appellants' contentions are

summarized below, and the full text of the contentions is included in the copy of the appeal attached as Exhibit No. 12.

The appeal raises four contentions involving inconsistencies of the approved division of land with the County's LCP policies. First, the appellants assert that the Mendocino County Planning Commission approved the division of land inconsistent with Coastal Zoning Code Section 20.368.020. This section requires a minimum parcel size of 160 acres for new parcels created within areas zoned as Rangeland. The 60-acre parcel that would be created in the County area zoned as Rangeland is clearly less than 160 acres. Second, the appellants contend that the approved project is inconsistent with LUP Policy 3.2-15 requiring that an agricultural master plan be prepared, submitted, and approved prior to approval of a land division of prime agriculture lands designated RL. The property subject to the land division contains prime agricultural land and yet no agricultural master plan was submitted or approved by the County. Third, the appellants contend that the project is inconsistent with the requirements of LUP Policy 3.2-16 prohibiting division of agricultural lands designated RL unless: (1) continued or renewed agricultural use is not feasible, (2) such conversion would preserve prime agricultural land, or (3) such division would concentrate development consistent with Section 30250 of the Coastal Act. The appellants contend that none of these exceptions under LUP Policy 3.2-16 have been demonstrated to exist, and that therefore the approved minor subdivision is inconsistent with LUP Policy 3.2-16. Finally, the appellants contend that the County-approved minor subdivision is inconsistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015, which require that new parcels shall be approved only where a satisfactory sewage disposal site exists.

B. LOCAL GOVERNMENT ACTION

On December 19, 2002 the Mendocino County Planning Commission approved Coastal Development Minor Subdivision No. 8-2002. The County attached to its coastal development permit seven standard conditions and four special conditions, included in their entirety in Exhibit No. 11. Standard Condition No. 5 requires the applicants to submit an acceptable site evaluation report to the Mendocino County Division of Environmental Health demonstrating compliance with policies for on-site waste treatment and disposal and compliance with County land division requirements, including identification of replacement areas for existing on-site sewage disposal systems which may exist on the site. Special Condition No. 4 requires the applicants to submit to the City of Point Arena evidence that all appropriate permits and clearances have been obtained for the project from the County of Mendocino, particularly as they relate to the conditions of approval imposed by CDMS 8-2002. In approving the proposed project, the County adopted findings in their staff report and Planning Commission hearing that conclude the project is consistent with all certified provisions of the LCP including protection of agricultural lands.

The decision of the Planning Commission was not appealed at the local level to the County Board of Supervisors. The County then issued a Notice of Final Action, which was received by Commission staff on January 2, 2003 (Exhibit No. 11). The County's Notice of Final Action noticed their action as appealable to the Commission. The project was appealed to the Commission in a timely manner on January 16, 2003, within 10 working days after receipt by the Commission of the Notice of Final Local Action. The local action by the Planning Commission need not be appealed to the Board of Supervisors before it is appealed directly to the Commission because the County charges a fee for local appeals.

The certified Mendocino County Coastal Zoning Code provides under Section 20.544.020(F) that in cases where two Coastal Commissioners appeal a decision of the County to approve a project where there has been no local appeal, the County may review the appeal before the Commission. In the statement submitted waiving the 49-day deadline for setting an appeal hearing, the applicants indicated their intention to allow sufficient time to initiate a "possible appeal to [the] Board of Supervisors." County staff routinely notifies the Board of Supervisors when Commission appeals occur to provide an opportunity for the Supervisors to review the matter pursuant to CZC Section 20.544.020(F) prior to Commission action. County staff has indicated to Commission staff in a letter received on October 20, 2003, that the Board of Supervisors declined to review the appeal (Exhibit No. 14).

C. PROJECT HISTORY AND SITE DESCRIPTION

The subject property is approximately 103-acres that would be divided along the City of Point Arena / Mendocino County boundary line into two parcels, including an approximately 43-acre parcel within the City, and an approximately 60-acre parcel located within the County. The property is located along the north side of Riverside Drive, also known as Eureka Hill Road in this area, immediately east of its intersection with Windy Hollow Road (Exhibit Nos. 1, 2 and 3). Several different Assessor's Parcel Numbers are assigned to this property for tax assessment purposes. The easternmost approximately two-thirds of the property exists inside the County's jurisdiction. The westernmost approximately one-third portion of the property exists inside the City of Point Arena (See Exhibit Nos. 3, 4, 9, and 10).

The portion of the property within the City is developed with an historic home and a detached garage with accessory structures that were built many years prior to the Coastal Act. The Commission granted Coastal Development Permit Waiver No. 1-89-134W in 1989, authorizing the construction of a single-family residence in the northeastern corner of the property located inside of the County's jurisdiction. At the time the Commission granted the waiver, the portion of the subject property outside of the current city limits was considered to be a separate parcel from the portions of the property inside the City of Point Arena containing the historic residence. In addition, the portion of the subject property within the city limits at that time was also considered two separate parcels, a

large, roughly square, approximately 43-acre parcel and a generally triangular-shaped approximately 2 ½-acre parcel adjacent to the southern portion of the approximately 43-acre parcel. The historic home straddles the boundary between these two previously separate parcels (See Exhibit No. 4).

In 1994, subsequent to the Commission's granting of Waiver No. 1-89-134W, the County recognized the portions of the subject property within the County area and the larger square approximately 43-acre parcel within the City limits as a single, larger parcel by issuing unconditional Certificate of Compliance (COC) No. CC-21-93. The COC approved by the County recognized five parcels ranging in size from less than one acre to approximately 120 acres, four of which are entirely situated within the City of Point Arena, and the remaining parcel, the subject property of the current appeal, which is situated within both the City and County (Exhibit No. 6). Although the COC included property within both the City and the County, in a letter dated September 3, 1993 from the City Clerk to the County Planning and Building Division, the City agreed to the County's issuance of the COC (See Exhibit No. 15).

The COC recognized the subject property in a somewhat different configuration than is before the Commission today (See Exhibit No. 6). A subsequent "boundary line adjustment" with another parcel changed the boundary lines into the current configuration (See Exhibit No. 8).

Coastal Development Boundary Line Adjustment (CDB 77-2000) added the smaller, roughly triangular-shaped, approximately 2 ½-acre parcel adjacent to the southwestern portion of the subject parcel in the City of Point Arena and removed the northernmost 20 acres of the approximately 78-acre subject parcel which contained the single-family residence approved under CDP Waiver No. 1-89-134W. The boundary adjustment approved the current configuration of the property, i.e. the approximately 60-acre portion of the subject property and the approximately 43-acre portion within the City limits (See Exhibit Nos. 7 & 8). No appeal of the County's coastal development permit approval of the boundary line adjustment was filed with the Commission.

Currently, the subject property is split-zoned. The approximately 60-acre (Proposed Parcel 2) portion of the property that lies within the LCP jurisdiction of the County of Mendocino is zoned Rangeland – 160-acre minimum (RL-160) under the County's certified LCP. The approximately 43-acre (Proposed Parcel 1) portion of the property that lies within the city limits of Point Arena is itself split-zoned with 2½ acres zoned Suburban Residential (SR) and the remaining portion zoned Agriculture Exclusive (AE) under the City of Point Arena certified LCP. Proposed Parcel 1, as approved by the County, is developed with a historic residence, detached garage, and several accessory structures (Exhibit No. 4).

The proposed Parcel 2 portion of the property, as approved by the County, is within the County's jurisdiction that is the subject of this appeal is zoned RL-160 and has no

structures on it. It is predominantly vegetated by grassland with herbaceous species. Hardwoods and conifers grow in the northwest corner of the parcel in the headwaters of a swale draining to the northwest (Exhibit Nos. 2, 3, 4, 8, 9, 10 6). The entire east half of proposed Parcel 2 is designated as Prime Agriculture land on certified LUP Map 25. The agricultural-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicants' agent Mr. Jim Barrett, serves as grazing pasture for the applicants' horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. It is evident from the aerial photograph included as Exhibit No. 10 that much of the surrounding property is used as agricultural rangeland. Principal permitted uses of RL-zoned property include grazing and forage for livestock, raising of crops, wildlife habitat improvement, harvesting of firewood for personal use, home occupations, and allowance of one single-family dwelling per legally created parcel. There are several widely scattered residences that exist on other parcels in the vicinity of the approximately 60-acre portion of the property that is here at issue. Some of these adjacent existing parcels within the unincorporated County area include lands designated Remote Residential with a 20-acre minimum parcel size (RMR-20).

The approximately 60-acre portion of the property located within the County boundary is east of Highway One and is not designated as highly scenic. The highly scenic areas are limited to those areas within view from Highway One, and none of the property is visible from Highway One. The property contains no known environmentally sensitive habitat areas.

D. SUBSTANTIAL ISSUE ANALYSIS

Section 30603(b)(1) of the Coastal Act states:

"The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division."

All four of the contentions raised in this appeal present potentially valid grounds for appeal in that they allege the project's inconsistency with policies of the certified LCP or with the public access policies of the Coastal Act. In all four cases, the Commission finds that a substantial issue is raised.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

"With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603."

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., tit. 14, section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that with respect to the allegations below, a substantial issue exists with regard to the approved project's conformance with the certified Mendocino County LCP.

Allegations Raising Substantial Issue

The appellants contend that the project as approved is not consistent with certain policies and standards of the certified LCP. The appellants specifically cite inconsistencies with (1) Coastal Zoning Code (CZC) Section 20.368.020 requiring 160-acre minimum lot area for property zoned rangeland; (2) LUP Policy 3.2-15 requiring that all land divisions of prime agriculture lands designated AG or RL be preceded by the preparation, submittal, and review of an approved master plan; (3) LUP Policy 3.2-16 prohibiting division or conversion to non agricultural use unless findings are made that continued or renewed agricultural use is not feasible, such conversion would preserve prime agricultural land, or division would concentrate development consistent with Section 30250 of the Coastal Act; and (4) LUP Policy 3.8-7, and CZC Section 20.516.015 requiring that a subdivision creating new parcels be approved only when it has been demonstrated that a satisfactory site for a sewage system exists.

1. Minimum 160-acre Lot Area Required for Property Zoned RL.

The appellants contend that the approved project is inconsistent with the County's LCP policies requiring a minimum parcel size of 160 acres for property zoned as Rangeland. The approximately 60-acre parcel that was approved to be created in the area zoned as Rangeland is clearly less than 160 acres.

LCP Policy:

Coastal Zoning Code Section 20.368.020 states:

Minimum Lot Area for RL Districts.

One hundred sixty (160) acres.

Discussion:

As discussed above, the subject property is currently split-zoned with different Assessor's Parcel Numbers. That portion within the City of Point Arena, west of the boundary line separating Point Arena from the County of Mendocino, contains approximately 43 acres and is split-zoned by the City Suburban Residential (SR) and Agricultural Exclusive (AE) Districts. That portion of the property within Mendocino County, the subject of this appeal, lying to the east of the city/county boundary, is zoned Rangeland – 160 acre minimum (RL-160) and consists of approximately 60 acres. Pursuant to Coastal Zoning Code Section 20.368.020, the minimum lot size for new parcels in the County's RL-160 zone is 160 acres. Since the approximately 60-acre size of the newly proposed parcel in the County would be significantly less than 160 acres, the County approval of the land division raises a substantial issue of conformance with Mendocino County certified CZC Section 20.368.020.

The County staff report does not specifically discuss the project's conformance with the 160-acre minimum lot size standard of Coastal Zoning Code Section 20.368.020. The minutes from the County Planning Commission's hearing on the subdivision contain statements suggesting that the County believes that subdivisions of split-zoned property which are consistent with minimum lot size requirements on at least one side of the division line are justified and can continue to occur. The minutes of the Planning Commission hearing state that chairman McCowen "noted that the application is consistent with the General Plan because one side of the division is conforming. ... Several Commissioners stated that they would support the project even though the Coastal Commission recently ruled against split-zone subdivisions. They felt that the Coastal Commission could appeal their decision."

The split-zoned land division project in Mendocino County that the Commission recently acted on that the Planning Commission referred to may have been Appeal No. A-1-MEN-02-148 (Auguste). The Coastal Commission found that Appeal No. A-1-MEN-02-148 raised a substantial issue and denied the project *de novo* at the Commission meeting of December 13, 2002. In the County staff report for that project, the County staff recognized that “it could be concluded that the project would not be consistent with the Land Use Maps” because the parcel is less than the required 160 acres, but County staff then went on to state that:

“a long standing policy of the County has been to permit division of split zoned property provided that the parcel size is consistent on at least one side of the division line. In this case, the area southwest of the highway, proposed Parcel 1 (5.88 acres), is consistent with the RR-5 Land Use designation. While staff does certainly acknowledge merit to alternative interpretations of this policy, at this time staff does not recommend changing the policy for an individual project. Rather, merits of the policy should be reviewed on a broader basis.”

Although the County may consider this common practice a “policy,” the Commission found in its action taken on Appeal No. A-1-MEN-02-148 that it is not a certified policy of the Local Coastal Program. Therefore, the County’s in-house, informal policy is not a part of the standard of review for subdivision projects and does not provide a basis for approval of a land division creating a parcel less than 160 acres in the RL-160 zone.

The Commission finds that the degree of factual and legal support for the County’s action is low, given that (1) CZC Section 20.368.020 sets a minimal parcel size of 160 acres for new parcels created in the RL-160 zone and the approved land division within the County includes a new approximately 60-acre parcel, and (2) the County cited an informal policy not contained in the certified LCP as a basis for over-riding the 160-acre minimum parcel size requirement of CZC Section 20.368.020. Therefore, the Commission finds that the appeal raises a substantial issue with respect to conformance of the approved project with the requirements of CZC Section 20.368.020 that the minimum parcel size of new parcels created in the RL-160 zone be 160 acres.

2. Land Divisions of Prime Agriculture Lands Designated RL Require an Approved Master Plan.

The appellants contend that the project as approved is inconsistent with LUP Policy 3.2-15 requiring land divisions of prime agriculture lands designated RL to require an approved master plan. No such plan was prepared or submitted as required.

LCP Policy:

LUP Policy 3.2-15 states:

All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. The County shall make the following findings during master plan review and before approving land divisions: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; (4) the divisions will not contribute to development conflicts with natural resource habitat and visual resource policies. In approving master plans, the County will require conservation easements, covenants against any further land divisions or other similar guarantees to ensure long-term agricultural uses for the affected parcel (emphasis added).

Discussion:

The east half of the approximately 60-acre, RL-160-zoned, portion of the property located in the County's jurisdiction is designated on the County's certified Land Use Maps as prime agricultural land. The intent of LUP Policy 3.2-15 is that all land divisions involving prime agriculture lands designated AG or RL be subject to the preparation and approval of a master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. Policy 3.2-5 requires that findings shall be made after preparation of the master plan and County review, and before approval of the land division that: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and overall operation; (3) the division is only for purposes allowed in AG or RL designations; and (4) the division will not contribute to development conflicts with natural resource habitat and visual resource policies. The certified LUP limits the number of residential units on this parcel (and on most parcels in the County) to one unit per parcel. As currently configured, the property already has one home on it, the Gus Miller historical home that is located on the portion of the property within the City of Point Arena (Exhibit Nos. 4 and 10). The approved land division would make it possible to create another homesite within the County portion of the property since the division would create a new parcel that does not already have a home on it. An agricultural master plan would have facilitated a review of how the approved subdivision and its effect of creating another homesite would affect the viability of agricultural operations. However, no master plan was prepared, submitted, or reviewed by the County as required. The County's approval did include Coastal Land Division Findings (see Exhibit No. 11) concluding that the approved subdivision would meet each of the findings that Policy 3.2-5 requires to be made after preparation and review of the master plan. However, the County staff report and hearing minutes contain no supporting analysis demonstrating how such conclusions can be made. Without a master plan having been first prepared, little basis exists for the conclusions that were made in the County's findings.

The Commission finds that the degree of factual and legal support for the County's action is low, given that the required master plan was not prepared, submitted, nor reviewed by the County prior to approval of the proposed land division as required. In addition, with the thousands of acres of Agricultural and Rangeland designated land in the Mendocino coastal zone and with rising residential land values creating pressure to create new home sites in the coastal zone, the precedential value of the County's action not requiring an agricultural master plan is relatively high with respect to future actions on divisions of prime agricultural lands. Therefore, the Commission finds that the appeal raises a substantial issue of conformance of the project as approved by the County with the provisions of LUP Policy 3.2-15 requiring that all land divisions of prime agriculture lands designated AG or RL be preceded by the preparation, submittal, and review of an approved master plan.

3. Limits on Division of Agricultural Lands.

The appellants contend that the project as approved is inconsistent with LUP Policy 3.2-16, which prohibits division of lands designated RL unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land, or (3) the division would concentrate development consistent with Section 30250. No findings demonstrating that any of these three exceptions to the prohibition on division of RL lands were made.

LCP Policy:

LUP Policy 3.2-16 states:

All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels.

"Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements:

- 1. An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program.*
- 2. An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

For purposes of this policy, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal plan (emphasis added).

Discussion:

The County portion of the approximately 103-acre subject parcel approved for subdivision contains approximately 60 acres of land zoned RL, with approximately half of that 60 acres designated as prime agricultural land. Therefore, the approved division is a division of lands designated RL, subject to the provisions of LUP Policy 3.2-16. This policy prohibits division of lands designated RL unless the County makes one of the following three findings: (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land, or (3) division would concentrate development consistent with Section 30250 of the Coastal Act.

The County's approval of Coastal Development Minor Subdivision No. 8-2002 contains no findings demonstrating that any of the three exceptions to the prohibition on division of RL lands contained in LUP Policy 3.2-16 are present or why the approved division is otherwise consistent with LUP Policy 3.2-16. In fact, the County adopted findings, contrary to exception No. 1, acknowledge continued agricultural use and viability. Aerial photographs indicate that the property continues to be under agricultural use. The agricultural-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicants' agent Mr. Jim Barrett, serves as grazing pasture for the applicants' horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. With regard to exception No. 2, contrary to preserving prime agricultural land, the approved division would facilitate the development of a home in agricultural-zoned lands, thereby reducing the viability of the portion of the property that would be viable for continued agricultural use. In addition, the portions of the property currently within the City's jurisdiction are designated Agricultural Exclusive and would be made less viable for agricultural use by being severed from the rest of the parcel. With regard to exception No. 3, the approved division would not concentrate residential development within the city limits but would instead facilitate creation of another home in the Rangeland-zoned area outside of the urban area and within a rural area inconsistent with Section 30250 of the Coastal Act. Since none of the exceptions under LUP Policy 3.2-16 that would allow for division of this land designated RL under the County LCP have been demonstrated to exist, the approved minor subdivision raises a substantial issue of conformance with LUP Policy 3.2-16.

The Commission finds that the degree of factual and legal support for the County's action to approve Coastal Development Minor Subdivision No. 8-2002 is low given that LUP Policy 3.2-16 prohibits division or conversion to non agricultural use unless findings are made that (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land, or (3) division would concentrate development consistent with Section 30250 of the Coastal Act and no such findings were made by the

County. Therefore, the Commission finds that the appeal raises a substantial issue with respect to conformance of the approved project with the requirements of LUP Policy 3.2-16.

4. Proof of Adequate Utilities.

The appellants contend that the project as approved is inconsistent with LUP Policy 3.8-7 requiring land divisions creating new parcels to be approved only where a satisfactory site for a sewage system exists. The County action to approve Coastal Development Minor Subdivision No. 8-2002 contained no findings that any evidence was provided prior to approval demonstrating that “a satisfactory site for a sewage system exists.”

LCP Policies:

LUP Policy 3.8-7 states:

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979 (emphasis added).

Coastal Zoning Code Section 20.516.015—General Criteria, dealing with utilities states:

New development shall be approved subject to the availability of necessary public services and consistent with the following provisions.

(A) Septage and Leach Field.

(1) Subdivisions or boundary line adjustments creating new parcels or additional residential, commercial or industrial building sites shall only be approved where the application is consistent with all provisions of this division and where:

(a) A community sewage disposal system with available capacity exists and is obligated to provide service; or a satisfactory site for an individual sewage system exists.

(b) Leach field approval shall require the satisfactory completion of a site evaluation on the site of each proposed septic system to be performed by a qualified hydrologist/soils engineer pursuant to techniques described in the "Land Division Requirements" of the Environmental Health Division of the County Public Health Department.

(c) Permits for new installations of septic tanks shall not be issued in the absence of a long term arrangement for septage disposal for that specific area.

(d) Newly constructed sewage disposal systems and expansion of existing systems shall be designed to serve development consistent with that permitted by the Land Use Plan (emphasis added).

Discussion:

The LUP and CZC provisions of the certified LCP cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system exists to serve future development accommodated by the land division at the time of approval of the coastal development permit. Policy 3.8-7 states that a land division “shall only be approved ...where a satisfactory site for an individual sewage system exists.” Coastal Zoning Code Section 20.516.015 also states that “subdivisions...creating new parcels or additional residential...building sites shall only be approved...where a satisfactory site for an individual sewage system exists. These LCP provisions also require that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

In general, a site may be approved for development of an onsite sewage disposal system if it can be found that: (1) it is at least 100 feet from any well, water body, or major break in terrain; (2) it is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if the natural grade exceeds a 20 percent slope; and (3) it meets established soil depth, texture and percolation rate criteria.

It should be noted that no technical data was discussed in the County’s findings for approval regarding the actual soil and slope conditions in terms of septic system suitability. Instead, the County simply conditioned the permit (Standard Condition No. 5) to require that “an acceptable site evaluation report (DEH Form Number 42.04) for proposed Parcel 2” be completed, including identification of replacement areas for existing on-site sewage disposal systems, which may exist on the project site prior to filing a Unilateral Agreement (Exhibit No. 11). The County approval did not identify evidence, which demonstrates that suitable septic capacity actually exists for future development on the parcel *prior* to approval of the project. Therefore, a substantial issue of conformance with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015 is

raised since at the time of the County approval, it had not been demonstrated that a satisfactory site for a sewage system exists.

The Commission finds that the degree of factual and legal support for the County's action to approve Coastal Development Minor Subdivision No. 8-2002 is low given that LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015 require evidence be provided demonstrating existence of a satisfactory site for a sewage system prior to County approval of a subdivision creating new parcels. No evidence demonstrating the existence of a satisfactory site for a sewage system on the approximately 60-acre portion of the approximately 103-acre subdivision was provided prior to the County's approval of the division. Therefore the County's approval of the project raises a substantial issue of conformance with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015, which require that a division of land be approved only when it has been demonstrated that a satisfactory site for a sewage system exists. Therefore, the Commission finds that the appeal raises a substantial issue of conformance of the project approved by the County with the LCP policies and standards cited above requiring sewage disposal capacity adequate to serve new development.

Conclusion of Part Three: Substantial Issue

The Commission finds that, as discussed above, the appeal raises a substantial issue with respect to the conformance of the approved project with the policies and standards of the LCP regarding: (1) the 160-acre minimum parcel size in the Rangeland Zoning District, (2) requirements for submittal of an agricultural master plan necessary for approval of subdividing agricultural lands containing prime agricultural lands, (3) limits on subdivision of RL-zoned agricultural land, and (4) proof of adequate utilities to serve future development that would be accommodated by a subdivision at the time the subdivision is approved.

PART FOUR—*DE NOVO* ACTION ON APPEAL

Staff Notes:

1. Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the merits of the project with the LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has

certified a Local Coastal Program, the applicable standard of review for the Commission to consider is whether the development is consistent with Mendocino County's certified Local Coastal Program (LCP). Testimony may be taken from all interested persons at the *de novo* hearing.

2. Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings above.

I. FINDINGS AND DECLARATIONS FOR DENIAL

The Commission hereby finds and declares:

A. PROJECT AND SITE DESCRIPTION

The Substantial Issue portion of this report is hereby incorporated by reference.

B. ANALYSIS OF LCP CONSISTENCY

The project as proposed is consistent with certain LCP provisions, including provision of adequate utilities requiring demonstration of an adequate site for on-site sewage treatment and the availability of water. However, as discussed below, the Commission is denying the proposed land division because it would be inconsistent with certified LCP provisions intended to protect agricultural rangeland.

1. Protection of Agricultural Lands

LCP Policies

Coastal Zoning Code Section 20.368.020 specifies a minimum lot size standard for rangeland as follows:

Minimum Lot Area for RL Districts.

One hundred sixty (160) acres.

Policy 3.2-15 related to use of prime agriculture land states:

All land divisions of prime agriculture lands designated AG or RL shall require an approved master plan showing how the proposed division would affect agricultural use on the subject property and the overall operation. The County shall make the following findings during master plan review and before approving land divisions: (1) the division will protect continued agricultural use and contribute to agricultural viability; (2) the division will not conflict with continued agricultural use of the subject property and

overall operation; (3) the division is only for purposes allowed in AG or RL designations; (4) the divisions will not contribute to development conflicts with natural resource habitat and visual resource policies. In approving master plans, the County will require conservation easements, covenants against any further land divisions or other similar guarantees to ensure long-term agricultural uses for the affected parcel. [Emphasis added.]

LUP Policy 3.2-16 states:

All agricultural lands designated AG or RL shall not be divided nor converted to non-agricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) concentrate development consistent with Section 30250. Any such permitted division or conversion shall be compatible with continued agricultural use of surrounding parcels.
"Feasible", as used in this policy, includes the necessity for consideration of an economic feasibility evaluation containing both the following elements:

- 3. An analysis of the gross revenue from the agricultural products grown in the area for the five years immediately preceding the date of the filing of proposed local coastal program or an amendment to any local coastal program.*
- 4. An analysis of the operational expenses beyond the control of the owner/operator associated with the production of the agricultural products grown in the area for the five years immediately preceding the date of the filing of a proposed local coastal program or an amendment to any local coastal program.*

For purposes of this policy, "area" means a geographic area of sufficient size to provide an accurate evaluation of the economic feasibility of agricultural uses for those lands included in the local coastal plan. [Emphasis added.]

Discussion

As described above, the project proposal would divide an approximately 103-acre, split-zoned, split-jurisdictional property into two parcels, proposed Parcel 1 consisting of an approximately 43-acre parcel, located within the city limits of Point Arena, and proposed Parcel 2 consisting of an approximately 60-acre parcel within an unincorporated area of the County of Mendocino. The east half of proposed Parcel 2, zoned RL-160, is mapped as Prime Agriculture land on the certified LCP land Use Maps. The RL rangeland zoning classification is intended to be applied to lands which are suited for, and are appropriately retained for, the grazing of livestock, and which may also contain some timber producing areas. The RL rangeland zoning classification includes land eligible for incorporation into Type II Agricultural Preserves, other lands generally in range use, intermixed smaller parcels and other contiguous lands, the inclusion of which is necessary for the protection and efficient management of rangelands.

The approximately 60-acre portion of the subject property (proposed Parcel 2) within the County's permit jurisdiction is a part of a much larger area in the vicinity that is zoned for RL agricultural purposes, although there are some smaller existing parcels in the vicinity zoned as Remote Residential with a 20-acre minimum parcel size. The Rangeland-zoned property is used mainly for grazing and some timber harvesting, and covers close to 3,000 contiguous acres (not necessarily adjacent to but in close proximity) generally surrounding the subject property to the north and south. The proposed division of land would result in a new approximately 60-acre parcel within this expansive area of agricultural use with the effect of allowing a new single-family residence to be established on the site in the future, thereby reducing the amount of area that is currently available for grazing and other agricultural activities.

The certified LCP provisions of CZC Section 20.368.020 for Mendocino County require minimum lot sizes of 160 acres for parcels created within rangeland RL-zoned property. The size of the new County-approved parcel would be approximately 60 acres, clearly less than the required 160 acres, and therefore, inconsistent with CZC Section 20.368.020.

The proposed land division is also inconsistent with the certified LCP provisions of LUP Policy 3.2-15 requiring an approved master plan for new parcels that are created containing prime agriculture designations within RL-zoned property. No master plan was prepared and submitted for County analysis of agricultural use on the subject property and overall operation as required. The County is required before approving land divisions to make findings during the master plan review that: (1) the [land] division will protect continued agricultural use and contribute to agricultural viability; (2) the [land] division will not conflict with continued agricultural use of the subject property and overall operation; (3) the [land] division is only for purposes allowed in AG or RL designations; and (4) the [land] division will not contribute to development conflicts with natural resource habitat and visual resource policies. Without an approved agricultural master plan, there is little basis for determining that the proposed land division meets the findings that are required pursuant to LUP Policy 3.2-15.

Finally, the proposed land division is inconsistent with the certified LCP provisions of LUP Policy 3.2-16 prohibiting division of RL designated lands unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land, or (3) the division would concentrate development consistent with Section 30250 of the Coastal Act. With regard to Exception No. 1, aerial photographs indicate that the property continues to be under agricultural use. The agricultural-zoned portion of the property is fenced and as reported to the Planning Commission at their December 19, 2002 meeting by the applicants' agent Mr. Jim Barrett, serves as grazing pasture for the applicants' horses. Coastal Commission staff conducted a site visit on June 2, 2003, and confirmed the presence of horses at the site. With regard to exception No. 2, contrary to preserving prime agricultural land, the sub-division would facilitate the development of a home in the agricultural-zoned lands, thereby reducing the parcel's

viability of the portion of the parcel that would be viable for continued agricultural use. In addition, the portions of the parcel currently within the City's jurisdiction are designated Agricultural Exclusive and would be made less viable for agricultural use by being severed from the rest of the parcel. With regard to exception No. 3, the subdivision would not concentrate residential development within the city limits but would instead facilitate creation of another home in the Rangeland-zoned area outside of the urban area and within a rural area inconsistent with the intent of Section 30250 of the Coastal Act. Since none of the exceptions under LUP Policy 3.2-16 that would allow for division of RL designated land have been demonstrated to exist, the approved minor subdivision is inconsistent with LUP Policy 3.2-16.

The requirements of the above-cited certified LCP policies specifying large minimum lot sizes, requiring the preparation of agricultural master plans, and prohibiting division of RL designated lands except under very limited circumstances, are designed to minimize potential conflicts between agricultural operations and residential land uses. Sections 20.458.005 and 20.458.010 of the Coastal Zoning Code limit the number of residences to one unit per parcel in the coastal zone. Therefore, approval of the proposed land division would allow for future construction of a residence on the newly created approximately 60-acre parcel. The applicants already have a house on the approximately 43-acre portion of the property. Without approval of the proposed land division, no home could be built in the RL-zoned portions of the property because the existing undivided parcel already has one residence, the maximum allowable pursuant to CZC Sections 20.458 and 20.458.010. While placement of an additional single-family residence on the RL property that meets the minimum lot size requirements would be consistent with RL-zoned principally permitted uses, construction of another house on the subject lot would diminish the viability of the primary-zoned purpose as rangeland. The approximately 60-acre portion of the 103-acre property that is proposed to be divided is relatively small for agricultural use, and the presence of a single-family house and attendant residential use would further limit its capacity to be used for grazing, whether for an agricultural operation conducted by the owners themselves, or through a lease to another rancher who could utilize the land in combination with other contiguous grazing lands in nearby areas. Use of the property for another single-family residence would also displace area on the property that could be used for other agricultural purposes including raising agricultural crops, which is a principally permitted use in the RL district.

In his letter received by the Commission on June 2, 2003, Mr. Jim Barret, an agent for the applicants, opines that the proposed subdivision would not divide lands zoned RL-160 and that the integrity of the 60-acre area of RL-160 would be maintained by the proposed land division. This opinion appears to be based on the fact that the boundary that would separate the two new parcels created by the subdivision would coincide with the edge of the County designated RL portion of the property rather than bisect the RL-designated area. LUP Policies 3.2-15 and 3.2-26 state that "all land divisions of prime agriculture lands designated AG or RL shall require an approved master plan" and "all agricultural lands designated AG or RL shall not be divided...," respectively (emphasis added).

When lands are divided, the division extends to all of the property in its entirety. Therefore, even in a case such as this where the property to be divided is split-designated with some portion of the parcel designated RL and other portions designated with some other LUP designation(s), all of the property would be divided, including the portion of the property designated RL. Therefore, LUP Policies 3.2-15 and 3.2-26 limit the division of this property.

The intent of LUP Policies 3.2-15 and 3.2-26 is in part to prohibit subdivisions of range lands that would not protect continued agricultural use and contribute to the agricultural viability of AG and RL designated lands. As discussed above, the proposed division of land would diminish the agricultural viability of the portion of the property designated as RL by facilitating the development of a home on the RL designated area that would otherwise not be allowed on the undivided parcel. The presence of a single-family house and attendant residential use would diminish the viability for agricultural use of an already relatively small agricultural property. Therefore, the Commission finds that as the proposed subdivision would diminish rather than protect continued agricultural use and would diminish rather than contribute to the agricultural viability of the RL designated lands, the proposed subdivision is inconsistent with LUP Policies 3.2-15 and 3.2-26.

In summary, approval of the proposed land division of the approximately 103-acre parcel would result in an inconsistency with the certified LCP provisions of CZC Section 20.368.020, as well as with LUP Policies 3.2-15 and 3.2-16. CZC Section 20.368.020 requires a minimum lot area for RL districts of 160 acres. The portion of the subject property that would become a parcel within the RL-160 zoning classification is only 60 acres, far below the minimum required. LUP Policy 3.2-15 requires all land divisions of prime agriculture lands designated RL to require an approved master plan showing how the proposed division would affect agricultural use on the subject property prior to making required findings that the land division would protect continued agricultural use and contribute to agricultural viability. No master plan has been produced to provide a basis for making required findings. LUP Policy 3.2-16 prohibits division of lands designated RL unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) the division would concentrate development consistent with Section 30250 of the Coastal Act. None of these findings can be made as the parcel continues to be used for agriculture, the subdivision would facilitate non agricultural development within prime agricultural lands, and the division would not concentrate development with the urban area of Point Arena but instead facilitate creation of another home in the rural area. Therefore, the proposed subdivision is inconsistent with LUP Policy 3.2-16.

Therefore, the Commission finds that the project as proposed is inconsistent with LUP Policies 3.2-15 and 3.2-16 and CZC Section 20.368.020 and must be denied.

2. Suitable Site for Septic Systems

LCP Policies

LUP Policy 3.8-7 states:

Land divisions and subdivisions creating new parcels or building sites or other proposed development, including lot line adjustments, mergers and issuance of conditional certificates of compliance shall be approved only where a community sewage disposal system with available capacity exists and is obligated to provide service or where a satisfactory site for a sewage system exists. Leach field approval shall require satisfactory completion of a site evaluation on the site of each proposed septic system. A leach field shall not be located where the natural grade exceeds 30 percent slope or where there is less than 5 feet of soil below the trench if natural grade exceeds 20 percent slope. This septic system policy is consistent with the Minimum Guidelines for the Control of Individual Wastewater Treatment and Disposal Systems adopted by the Regional Water Quality Control Board on April 17, 1979.

Coastal Zoning Code Section 20.516.015—General Criteria, dealing with utilities states:

New development shall be approved subject to the availability of necessary public services and consistent with the following provisions.

(A) *Septage and Leach Field.*

(1) Subdivisions or boundary line adjustments creating new parcels or additional residential, commercial or industrial building sites shall only be approved where the application is consistent with all provisions of this division and where:

(a) A community sewage disposal system with available capacity exists and is obligated to provide service; or a satisfactory site for an individual sewage system exists.

(b) Leach field approval shall require the satisfactory completion of a site evaluation on the site of each proposed septic system to be performed by a qualified hydrologist/soils engineer pursuant to techniques described in the "Land Division Requirements" of the Environmental Health Division of the County Public Health Department.

(c) Permits for new installations of septic tanks shall not be issued in the absence of a long term arrangement for septage disposal for that specific area.

(d) Newly constructed sewage disposal systems and expansion of existing systems shall be designed to serve development consistent with that permitted by the Land Use Plan.

Discussion

LUP Policy 3.8-7 states that a site evaluation shall be satisfactorily completed *before* approval of land divisions, lot line adjustments, mergers and certificates of compliance. Coastal Zoning Code Section 20.516.015 states that subdivisions creating new parcels shall *only* be approved where a satisfactory site for an individual sewage system exists. These provisions of the certified LCP cited above require that the approving authority consider whether an adequate site to develop an on-site sewage disposal system to serve an additional single-family residence that would be allowed on the approximately 60-acre parcel created by the subdivision is available *before* approving a coastal development permit. These LCP policies and standards require that the granting of a coastal development permit shall be supported by findings establishing that the proposed development will be provided with adequate utilities. These policies reflect the requirements of Section 30250(a) of the Coastal Act that new development be located in areas able to accommodate it.

In general, a site may be approved for development of an onsite sewage disposal system if it can be found that: (1) it is at least 100 feet from any well, water body, or major break in terrain; (2) it is located on ground with less than a 30 percent slope or where there is less than 5 feet of soil below the trench if the natural grade exceeds a 20 percent slope; and (3) it meets established soil depth, texture and percolation rate criteria.

Before the proposed division of land can be found consistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015, the applicants must demonstrate that suitable septic capacity actually exists for future development on the parcel prior to approval of the project, and must show that adequate sewage utilities are available to serve the proposed development by providing technical data demonstrating the suitability of specific areas for onsite sewage disposal.

On June 2nd 2003, for purposes of the Commission's *de novo* review, the applicants provided evidence demonstrating the existence of a satisfactory site for a sewage system with adequate capacity to serve the approximately 60-acre portion of the approximately 103-acre subdivision (Exhibit No.16, page 7). In a cover letter transmitting the information, the applicants state:

“After receiving the appeal (A-1-MEN-03-003) and discovering that one alleged basis for appeal is inconsistency with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015, we asked for a waiver of the 49 day rule to allow time to complete soils work that would be consistent with what appears to be a new or different interpretation of codes. A certified professional soils scientist, Carl

Rittiman, was retained; completed an on-site investigation; prepared a report of findings; designed systems and submitted it to the County Dept. of Environmental Health for review and approval. The County Health Dept. approved the work and gave final approval to the land division on April 7, 2003.”

The submitted evidence included a letter from Scott Miller of Mendocino County Department of Environmental Health stating that the soils investigation and septic system design meet County requirements.

Therefore, as the evidence submitted by the applicants for purposes of the Commission’s *de novo* review demonstrates that an adequate site to develop an on-site sewage disposal system exists, the Commission finds the proposed land division is consistent with LUP Policy 3.8-7 and Coastal Zoning Code Section 20.516.015.

However, as discussed in Finding 1 above, the Commission finds that the proposed land division is not consistent with certain other LCP policies regarding divisions of land in areas designated and zoned for agricultural use, including 1) policies establishing minimum sizes for new parcels to be created in the RL-160 zone; 2) policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands, and 3) policies prohibiting division of lands designated RL unless continued or renewed agricultural use is not feasible; or such conversion would preserve prime agricultural land; or if the division would concentrate development consistent with Section 3025 of the Coastal Act. Therefore, the proposed development must be denied.

3. Availability of Water

LCP Policies

LUP Policy 3.8-9 states:

“Approval of the creation of any new parcels shall be contingent upon an adequate water supply during dry summer months which will accommodate the proposed parcels, and will not adversely affect the groundwater table of contiguous or surrounding areas. Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982, as revised from time to time and the Mendocino County Division of Environmental Health’s Land Division requirements as revised. (Appendix 6)

Commercial developments and other potential major water users that could adversely affect existing surface or groundwater supplies shall be required to show proof of an adequate water supply, and evidence that the proposed use shall not adversely affect contiguous or surrounding water sources/supplies. Such required proof shall be demonstrated prior to approval of the proposed use.”

Mendocino County Coastal Groundwater Study—June 1982 states:

“Areas designated MWR (Marginal Water Resources) shall have a minimum lot size of 5 ac; ‘proof of water’ not required. All lots less than 5 ac shall be required to demonstrate ‘proof of water’.

Discussion

LCP Policy 3.8-9 states that approval of all new parcels shall be contingent upon an adequate water supply during dry summer months that will accommodate the proposed parcels. The existing historic residence situated on the approximately 43-acre portion of the parcel within the City of Point Arena is served by an existing on-site well and water system. The approximately 60-acre parcel that would be created within the County of Mendocino currently does not have a well or other developed water supply.

In the early 1980’s the Department of Water Resources performed a study of the geology, ground water hydrology, and the availability of water from marine terrace and alluvial deposits and bedrock formations of the Mendocino County coastal area. The findings of the study were presented in a report entitled *Mendocino County Coastal Ground Water Study*, dated June 1982. A map of ground water availability contained in that report indicates that the subject parcel is located in an area mapped as an area of Marginal Water Resources (MWR) where ground water is moderately developed or of limited availability.

LUP Policy 3.8-9 as described above requires that demonstration of proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study and the Mendocino County Division of Environmental Health’s Land Division requirements as set forth in Appendix 6 of the certified LUP. As provided in certified LUP Policy 3.8-9, LUP Appendix 6 was revised during July 1989, and the *Mendocino County Coastal Groundwater Development Guidelines* were adopted by the Mendocino County Board of Supervisors on November 21, 1989. The Guidelines are considered to be a part of the certified LCP, and these guidelines establish the requirements for proof of water and hydrological studies that the County has used since 1989 to assure that development is compatible with the limitations of the local water supply. Water well testing guidelines for proof of water require that water wells be tested “during dry season conditions, which is defined to be the period of August 20th to October 31st.” The hydrological study guidelines in the document set forth requirements for studies to be performed for certain types of development and land divisions in order to determine the adequacy of on-site groundwater supply for a proposed development and to document any adverse impacts on local water users and the aquifer as a whole.

Mendocino County certified LCP Policy 3.8-9 states that “*Demonstration of the proof of water supply shall be made in accordance with policies found in the Mendocino Coastal Groundwater Study dated June 1982 as revised from time to time and the Mendocino*

County Division of Environmental Health's Land Division requirements as revised (Appendix 6)." The *Mendocino County Coastal Ground Water Study* states: "The determination of availability of water for a specific development requires professional judgment and interpretation of all available data. This study, though not site specific, has identified coastal areas of differing ground water availability.... From this information, general guidelines can be drawn to aid the planner in reviewing proposed developments. It is recommended that: ...Areas designated MWR (Marginal Water Resources) shall have a minimum lot size of 5 ac; 'proof of water' not required. All lots less than 5 ac shall be required to demonstrate 'proof of water.'" Because the subject parcel that would be created in the County portion of the land division would be in excess of 5 acres, demonstration of proof of water is not required to find conformance with LUP Policy 3.8-9.

The Commission finds the proposed land division is consistent with provisions of LUP Policy 3.8-9 concerning proof of availability of water for new parcels created by land divisions. However, as discussed in Finding 1 above, the Commission finds that the proposed land division is not consistent with certain other LCP policies regarding divisions of land in areas designated and zoned for agricultural use, including 1) policies establishing minimum sizes for new parcels to be created in the RL-160 zone; 2) policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands, and 3) policies prohibiting division of lands designated RL unless continued or renewed agricultural use is not feasible; or such conversion would preserve prime agricultural land; or if the division would concentrate development consistent with Section 3025 of the Coastal Act. Therefore, the proposed development must be denied.

4. Alternatives

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicants' property or unreasonably limit the owner's reasonable investment backed expectations of the subject property. Denial of this amendment request to divide the property into two separate parcels would still leave the applicants available alternatives to use the property in a manner that would be consistent with the policies of the LCP.

The applicants currently have a residence on the approximately 43-acre portion of the property within the City of Point Arena (Exhibit Nos. 4 and 10, page 3). In addition, the applicants can use the approximately 60-acre portion of the property within the County's jurisdiction for a number of agricultural uses specified as principal permitted uses in the RL-160 zone including grazing and forage for livestock and raising of crops, whether for an agricultural operation conducted by the owners themselves, or through a lease to another rancher who could utilize the land in combination with other contiguous grazing lands in nearby areas. After securing a coastal development use permit from the County, the applicants could also utilize this approximately 60-acre portion of the property for

any relevant conditionally permitted agricultural use related to and compatible with ranching such as recreational use. All of the above-referenced uses allow the owner economic use of the subject property without developing the proposed new parcel for residential use.

Therefore, the Commission finds that feasible alternatives to the proposed project exist for the applicants to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP.

Conclusion of Part Four: De Novo Action on Appeal

The Commission finds that as discussed above, the project as proposed is inconsistent with the Mendocino County certified LCP because (1) the proposed land division would create an approximately 60-acre parcel that is less than the 160-acres required by CZC Section 20.368.020 for new parcels created within RL-160 zoning districts; (2) no agricultural master plan has been prepared, submitted, and approved for the proposed land division of prime agricultural lands, inconsistent with the requirements of LUP Policy 3.2-15; and (3) none of the three exceptions to the prohibition on division of RL lands contained in LUP Policy 3.2-16 are present.

The Commission finds that there are no conditions that could be applied that could make the proposed land division consistent with the minimum lot size standards of CZC Section 20.368.020 or the prohibition on division of RL designated lands in LUP Policy 3.2-16. Therefore, the Commission finds that the proposed project must be denied.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Section 13906 of the California Code of Regulation requires Commission approval of coastal development permit applications to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact that the activity may have on the environment.

The Commission incorporates its findings on conformity with LCP policies at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report.

As discussed herein, in the findings addressing the consistency of the proposed project with the certified LCP, the proposed project is not consistent with the policies of the certified LCP regarding divisions of land in areas designated and zoned for agricultural

use, including policies establishing minimum sizes for new parcels to be created in the RL-160 zone; as well as policies requiring the preparation, submittal, and review of an agricultural master plan for division of prime agricultural lands; and policies requiring findings showing that (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or (3) the division would concentrate development consistent with Section 30250 of the Coastal Act.

As also discussed above in the findings addressing project alternatives, there are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Regional Location Map
2. Vicinity Map
3. Detail Local Vicinity
4. Site Plan
5. Parcel Configurations before COCs
6. Certificate of Compliance
7. Boundary Line Adjustment (CDB 77-2000)
8. Current Property Configuration
9. Zoning Map
10. Aerial Photo and Site Photos
11. Notice of Final Action & Staff Report
12. Appeal
13. City Final Action
14. County Letter
15. City Authorization for County Issuance of COCs
16. Applicants' Correspondence
17. Anne E. Mudge Correspondence